

FILED

10:38 am Sep 01 2020

Clerk U.S. District Court

Northern District of Ohio

Cleveland

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>Northern District of Ohio</u>
Name (under which you were convicted): <u>Karl James Rogers</u>		Docket or Case No.: <u>3:18-cr-00026</u>
Place of Confinement: <u>Federal Satellite Low Elkton</u>	Prisoner No.: <u>65276-060</u>	
UNITED STATES OF AMERICA		Movant (include name under which convicted)
		v. <u>Karl James Rogers</u>

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

Federal District Court, Northern District of Ohio, Toledo, Ohio

- (b) Criminal docket or case number (if you know):
- 3:18-cr-00026

2. (a) Date of the judgment of conviction (if you know):
- September 26, 2019

(b) Date of sentencing: September 23, 2019

3. Length of sentence:
- 96 months

4. Nature of crime (all counts):

18 USC 2252(a)(2) Receipt and Distribution of Child Pornography

5. (a) What was your plea? (Check one)

(1) Not guilty ☒(2) Guilty ☐(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
- N/A

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☒No ☐

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8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

- (a) Name of court: N/A
- (b) Docket or case number (if you know): N/A
- (c) Result: N/A
- (d) Date of result (if you know): N/A
- (e) Citation to the case (if you know): N/A
- (f) Grounds raised: N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): N/A
- (2) Result: N/A
- (3) Date of result (if you know): N/A
- (4) Citation to the case (if you know): N/A
- (5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): N/A

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(4) Nature of the proceeding: N/A
 (5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐ N/A

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Ineffective Assistance of Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Attorney failed to negotiate plea agreement, and set a change of plea hearing without consulting me. At trial attorney failed to file motions to suppress evidence. Attorney used strategy at trial that made me look worse to the jury. After trial, attorney was routinely not taking my calls, and also had to file motions to move sentencing due to his poor health. At sentencing attorney failed to demand a hearing for restitution and forfeiture. After sentencing attorney failed to file a direct appeal on my behalf as directed by me. Attorney failed to provide copy of case file to me when asked to do so by my father.

(b) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

N/A

- (2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) **Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

N/A

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND TWO:

Denial of due process

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Judge issued faulty jury instructions at trial. The judge instructed the jury to disregard any reference to distribution in making their decision, even when the indictment read "Receipt AND Distribution of Child Pornography." Furthermore the judgement paperwork reads ~~Dr~~ Receipt and Distribution when the instruction given was to disregard distribution.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐

N/A

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(2) If you did not raise this issue in your direct appeal, explain why: N/A**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/AName and location of the court where the motion or petition was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

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GROUND THREE:Denied Speedy Trial

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Approximately 21 months elapsed between date of arrest and date of sentencing. 15 months elapsed between arrest and trial. During this time the government filed multiple motions to extend deadlines. Among these was a motion to negotiate a plea bargain, which the government never attempted to make an offer to my knowledge.

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐

N/A

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

N/A

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

N/A

Date of the court's decision: _____

N/A

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

N/A

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A**GROUND FOUR:**Denied Due Process

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I was not given a hearing to determine Restitution or Forfeiture, and the government never proved that forfeiture was warranted for all but 3 items that were seized during search warrant. Government also did not prove that there was proximate cause to order restitution. Government never proved that conduct that I was found guilty of during specified indictment period applies to victims which I am paying restitution to.

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐N/A

(2) If you did not raise this issue in your direct appeal, explain why:

N/A(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒N/A

(2) If you answer to Question (c)(1) is "Yes," state:

N/A

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Type of motion or petition: N/AName and location of the court where the motion or petition was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A
 Grounds 1-4, They were not presented due to the time limit expiring for direct appeal and also due to the fact that I had no legal representation and I have little knowledge of how to file legal documents.

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒
- If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: Reese M. Wineman
Norwalk, Ohio

(b) At the arraignment and plea: Reese M. Wineman
Norwalk, Ohio

(c) At the trial: Reese M. Wineman
Norwalk, Ohio

(d) At sentencing: Russell V. Leffler
Norwalk, Ohio

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐ N/A

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18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief:

Vacate conviction and
Judgements with prejudice.

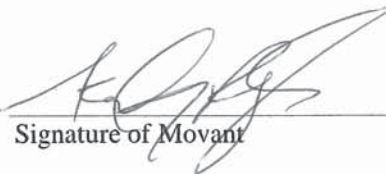
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on

August 27 2020
(month, date, year)

Executed (signed) on August 26 2020 (date)



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

